BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Tariffs to Recover Through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment	)))))))	Case No. 07-478-GA-UNC

POST-HEARING REPLY BRIEF OF COLUMBIA GAS OF OHIO, INC.

Mark R. Kempic, Assistant General Counsel
Kenneth W. Christman, Associate General Counsel
Stephen B. Seiple, Lead Counsel
Daniel A. Creekmur, Trial Attorney
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117
Telephone: (614) 460-4680
Fax: (614) 460-6986
Email: dcreekmur@nisource.com

February 19, 2008

TABLE OF CONTENTS

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Columbia Gas of Ohio, Inc. for Approval of Tariffs to Recover Through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment	)))))))	Case No. 07-478-GA-UNC

POST-HEARING REPLY BRIEF OF COLUMBIA GAS OF OHIO, INC.

I. INTRODUCTION

On December 28, 2007, the Staff of the Public Utilities Commission of Ohio ("Staff"), Columbia Gas of Ohio, Inc. ("Columbia"), the Office of the Ohio Consumers' Counsel ("OCC") and Ohio Partners of Affordable Energy ("OPAE") jointly filed an Amended Stipulation and Recommendation ("Amended Stipulation"). On December 31, 2007, parties in this case filed their initial post-hearing briefs. On February 1, 2008, Columbia submitted to Staff, the OCC and OPAE the Riser Material Plan ("RMP") pursuant to the Amended Stipulation. On February 4, 2008, all parties jointly filed an Agreement that stipulated certain facts regarding negotiations and the development of the Amended Stipulation. Reply Briefs must be filed by February 19, 2008.

II. ARGUMENT

The Commission, Staff, Columbia, the OCC, OPAE, and all other Intervenors in various statements, have recognized the tremendous public safety issues related to potential riser failures and hazardous leaks in service lines. Customer ownership of service lines and risers presents an obvious predicament because customers have the responsibility to maintain service lines and risers; unregulated, independent plumbers effectuate the repairs; yet Columbia bears the responsibility for all safety inspection, safety issues and adherence to federal and state regulations. Ohio's natural gas consumers face an unusual and burdensome situation where customer-ownership dictates repairs and replacements for risers prone to failure and hazardous service lines must be borne by the customer.[1]

Under the Amended Stipulation, central management will enable Columbia to provide its customers with better oversight, control and structure over repairs and replacements of service lines and repairs. The Amended Stipulation will also enable Columbia to provide all customers, regardless of economic status, with a safe, uniform and affordable system for all repairs and replacements of hazardous service lines and prone to failure risers. The benefits to customers are significant and will undoubtedly provide a safer and more affordable natural gas distribution system for Columbia's customers.

A. THE AMENDED STIPULATION AND RECOMMENDATION MEETS THE COMMISSION'S SETTLEMENT CRITERIA, AND COMMISSION APPROVAL IS PRUDENT AND NECESSARY.

Ohio Adm. Code 4901-1-30 authorizes parties to Commission proceedings to enter into stipulations. In considering the reasonableness of a stipulation, the Commission has used the following criteria:

[1] 49 U.S.C. § 60113.

(1) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

(2) Does the settlement, as a package, benefit ratepayers and the public interest?

(3) Does the settlement package violate any important regulatory principle or practice?[2]

The Amended Stipulation meets the Commission's three-prong test. Further, although a partial stipulation is not binding on the Commission, the terms of the stipulation can be accorded substantial weight.[3] The Commission has noted that "this concept is particularly valid where the stipulation is supported or unopposed by the vast majority of parties in the proceeding in which it is offered."[4] The Amended Stipulation has been endorsed by Staff, Columbia, the OCC and OPAE. Of the remaining four parties in the proceeding, Industrial Energy Users-Ohio ("IEU") has not opposed the Amended Stipulation. The Amended Stipulation is, therefore, supported or unopposed by a majority of parties in the proceeding and should be accorded substantial weight.

1. THE AMENDED STIPULATION IS THE PRODUCT OF SERIOUS BARGAINING AMONG CAPABLE, KNOWLEDGEABLE PARTIES.

Columbia initiated and sought settlement discussions with all parties of record and the Amended Stipulation was a continuation of the discussions that evolved from the Stipulation and Recommendation filed on October 26, 2007. Some parties indicated an interest in pursuing settlement discussions, while other parties admitted it would be futile to continue negotiations due

---

[2] *Ohio-American Water Co.,* Case No. 99-1038-WW-AIR (June 29, 2000); *Cincinnati Gas & Electric Co.,* Case No. 91-410-EL-AIR (April 14, 1994); *Western Reserve Telephone Co.,* Case No. 93-230-TP-ALT (March 30, 1994); *Ohio Edison Co.,* Case No. 91-698-EL-FOR, et al. (December 30, 1993); *Cleveland Electric Illum. Co.,* Case No. 88-170-EL-AIR (January 30, 1989); *Restatement of Accounts and Records (Zimmer Plant),* Case No. 84-1187-EL-UNC (November 26, 1985).

[3] *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm'n.* (1978), 55 Ohio St.2d 155; See Initial Brief of Utility Service Partners, Inc. (hereinafter "USP Brief") at 16.

[4] *In re Ohio Dept. of Development for an Order Approving Adjustments to the Universal Fund Riders,* Case No. 07-661-EL-UNC, Opinion and Order, (December 19, 2007) at p. 18; See USP Brief at 16.

to expressed settlement positions.[5] In particular, Utility Service Partners, Inc. ("USP") and ABC Gas Repair, Inc. ("ABC") stated that they would not support a settlement where Columbia assumed responsibility for the future maintenance, repair and replacement of hazardous customer service lines.[6] Columbia, USP nor ABC continued or sought further settlement discussions with each other because it was evident that the parties had reached an impasse on their respective positions and further settlement discussions would be futile.[7]

The fact that USP and ABC did not seek to participate nor were invited to participate in the settlement discussions leading up to the Amended Stipulation does not preclude the Amended Stipulation from being a product of serious bargaining among capable, knowledgeable parties. "[A party] is relieved of any obligation to continue efforts to negotiate where he or she is told that a settlement offer will never be made and any additional negotiation would be considered "a vain act."[8] The ongoing settlement discussions leading to the Amended Stipulation did not contemplate a change in the customer service line provisions of the October 26, 2007 Stipulation. Accordingly, Columbia, in good faith, believed that settlement discussions with USP and ABC would be a "vain act" and, therefore, did not contact these parties prior to filing the Amended Stipulation. Likewise, USP and ABC believed their settlement position precluded agreement with Columbia and Staff, which caused them to abandon settlement discussions with Columbia and Staff.[9]

More importantly, though, USP's and ABC's participation in the Amended Stipulation is not required. The fact that all parties did not sign the Amended Stipulation does not affect the

---

[5] *In re Application of Columbia Gas of Ohio, Inc. for Approval of Tariffs to Recover Through an Automatic Adjustment Clause Costs Associated with the Establishment of an Infrastructure Replacement Program and for Approval of Certain Accounting Treatment*, Agreement at ¶ 2 (Feb. 4, 2008).
[6] Id. at ¶ 2, 5 and 6.
[7] Id.
[8] *Wagner v. Midwestern Indem. Co.*, 699 N.E.2d 507, 512 (Ohio 1998) (quoting Galayda v. Lake Hosp. Sys., Inc., 644 N.E.2d 298, 304 (Ohio 1994)).
[9] Agreement at ¶ 2.

Commission's analysis. As noted above, although a partial stipulation is not binding on the Commission, the terms of the stipulation can be accorded substantial weight.[10]

Columbia did engage in ongoing negotiations with Interstate Gas Supply, Inc. ("IGS") before and after the filing of the October 26, 2007 Stipulation and Recommendation[11] and after the filing of the Amended Stipulation. Further, the OCC and OPAE expressed an interest in continuing settlement discussions both before and after the October 26, 2007 Stipulation had been filed. Columbia initiated and sought settlement discussions with all parties of record. Further, Columbia continued to engage all parties and conduct settlement discussions prior to and throughout this proceeding with any and all parties who expressed any interest in pursuing settlement discussions.

The parties who engaged in settlement discussions and became signatory parties, and the attorneys representing those parties, have participated in Commission proceedings for many years. Staff is, of course, particularly knowledgeable with respect to the pipeline safety issues that lie at the heart of this case. The OCC, as the statutory representative of residential consumers, is clearly a capable and knowledgeable party. In fact, USP states that "[property owners] absence from the signature page of the [October 26, 2007] Stipulation and Recommendation suggests that there is no serious bargaining in this case."[12] USP admits that the OCC holds such an important and necessary interest in the context of this case that a stipulation that takes into consideration its interests – the interests of property owners – would demonstrate that the Amended Stipulation is a product of serious bargaining among capable, knowledgeable parties. In testimony before the House Public Utilities Committee on January 16, 2008, the OCC stated that, "Since becoming the Consumers' Counsel in April 2004, OCC has intervened in or participated in approximately 370 cases before

[10] *Consumers' Counsel v. Pub. Util. Comm'n.* (1992), 64 Ohio St.3d 123, at 125, citing *Akron v. Pub. Util. Comm'n.* (1978), 55 Ohio St.2d 155
[11] Agreement at ¶ 9.
[12] Initial Brief of Utility Service Partners, Inc. at 19.

state and federal administrative agencies or courts. Approximately 290 proceedings have been before the Public Utilities Commission of Ohio." OPAE has been an advocate for low-income Ohioans for years and has been an active participant in numerous regulatory proceedings. The parties supporting or not opposing the Amended Stipulation (Columbia, Staff, OCC, OPAE and IEU) also represent a wide range of interests, which are broadly representative of the interests of the ratepayer and the public interest. Thus, the Amended stipulation is the product of serious bargaining among capable, knowledgeable parties.

2. THE AMENDED STIPULATION BENEFITS RATEPAYERS AND THE PUBLIC INTEREST BY PROMOTING PUBLIC SAFETY AND INCREASING COLUMBIA'S ABILITY TO IMPLEMENT THE NATURAL GAS PIPELINE SAFETY ACT REGULATIONS.

The Amended Stipulation preserves all benefits of the October 26, 2007 Stipulation while providing additional benefits to customers. The benefits of the Amended Stipulation to the ratepayers and the public interest are demonstrated by the addition of the OCC as a signatory party. The Amended Stipulation provides for the creation and submission of a Riser Materials Plan ("RMP") to the Staff, the OCC and OPAE. The plan summarizes the riser materials that Columbia will use in its riser replacement program under the IRP and its rationale for that decision. The RMP allows for a review of riser materials selected by Columbia, including potential objections by signatory parties or other parties granted intervention in this docket, and an expedited Commission hearing. The RMP provides assurance that the appropriateness of the riser materials to be used in the replacement of prone to failure risers is determined prior to Columbia incurring a significant investment. The RMP also ensures customers receive safe and reliable repairs at the lowest cost possible.

On February 1, 2008, Columbia submitted the RMP to Staff, the OCC and OPAE. Upon extensive research, field visits and evaluations, Columbia has committed to using the Perfection

ServiSert riser fitting within its riser replacement program where possible. The ServiSert fitting allows for the replacement of a compression fitting riser head without the need for excavation, thus providing significant savings in labor costs and greater customer satisfaction. The use of the ServiSert fitting undoubtedly provides significant cost and satisfaction benefits for ratepayers and the public interest.

The Amended Stipulation also provides additional benefits to the ratepayers and the public interest:

- A "sunset" provision limits the time period that the IRP can be applied to the particular matters at issue in this case. After June 30, 2011, capital investments related to the IRP can neither accrue PISCC nor deter capital-related expenses, i.e. depreciation, property taxes or gross receipts tax.
- Customers who apply for reimbursement of riser and customer service line-related expenditures will be reimbursed by check only, instead of potentially receiving a bill credit if they had a past due gas bill arrearage.
- As part of the annual IRP filings, both the OCC and Commission Staff will be provided audited accounting and billing records in sufficient detail to analyze Columbia's filings.
- Columbia will work with the OCC and Commission Staff to develop customer communication and education materials related to the IRP program.

Commission approval of the Amended Stipulation also increases Columbia's ability to implement gas pipeline safety regulations. The IRP will provide a comprehensive and effective solution to a serious pipeline safety situation regarding prone to failure risers and hazardous service lines. The IRP will result in the systematic and uniform replacement of those risers and service lines with minimal impact on Columbia's ratepayers. In addition, the Amended Stipulation will

conform the physical treatment of those risers and service lines with federal pipeline safety regulations by allowing Columbia, the entity responsible for *complying* with federal pipeline safety regulations[13], to maintain, repair and replace the riser or service line for *all* customers.

3. THE AMENDED STIPULATION DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE OR PRACTICE.

The Amended Stipulation does not violate any important regulatory principle or practice. Its provisions are consistent with the ratemaking provisions and the pipeline safety requirements of the Ohio Revised Code, the Ohio Administrative Code and prior Commission precedents. While USP and ABC assert the Amended Stipulation violates important regulatory principles or practices that relate to utility customers, it is critical to point out that the OCC, statutory representative of residential customers[14], and OPAE, an advocate for low-income customers, have supported the Amended Stipulation. The endorsements of those parties in this proceeding who have an obligation or duty to represent a class of customers unequivocally demonstrates that residential and low-income customers disagree with USP's and ABC's assertions that the Amended Stipulation violates regulatory principles or practices that relate to those customers. On the contrary, the endorsements of the OCC and OPAE demonstrate that residential and low-income customers support the Amended Stipulation as advancing the Commission's current regulatory principles and practices. USP and ABC have conveniently ignored this important distinction and continue to assert the claims of third parties rather than advancing their own interests.

---

[13] *See* 49 U.S.C. § 60113; and 49 C.F.R. § 192.

[14] R.C. 4911.02(C) implements the obligation and authority of the Office of the Ohio Consumers' Counsel to "institute, intervene in, or otherwise participate in proceedings in both state and federal courts and administrative agencies on behalf of the residential consumers concerning review of decisions rendered by, or failure to act by, the public utilities commission."

B. THE PUBLIC UTILITIES COMMISSION OF OHIO HAS THE REQUISITE AUTHORITY TO APPROVE THE AMENDED STIPULATION AND SUCH APPROVAL DOES NOT VIOLATE THE TAKINGS CLAUSE NOR IMPAIR THE OBLIGATIONS OF EXISTING CONTRACTS.

Pursuant to R.C. 4905.04 the Commission is vested with the power and jurisdiction to supervise and regulate public utilities and to require public utilities to render all services exacted by the Commission. The Commission has general supervision over public utilities and may examine the utilities' activities relating to the adequacy of service and the safety and security of the public.[15] The Commission also has the power to inspect utilities, which includes the power to prescribe any rule or order necessary for protection of public safety.[16] More specifically, the Commission may prescribe any rule or order to carry out pipeline safety regulations.[17] Because of these powers, the Commission can direct Columbia to install, repair, replace or service any and all facilities necessary for the safe provision of natural gas service to consumers. Exacting public safety falls clearly within the Commission's jurisdiction, as does the ability to require utilities to render certain services. Thus, the Commission has the necessary authority to approve the Amended Stipulation.

1. COLUMBIA'S ASSUMPTION OF FINANCIAL RESPONSIBILITY FOR THE FUTURE MAINTENANCE, REPAIR AND REPLACEMENT OF HAZARDOUS SERVICE LINES AND THE REPLACEMENT OF PRONE TO FAILURE RISERS DOES NOT VIOLATE THE TAKINGS CLAUSE.

USP and ABC contend the IRP proposed by Columbia amounts to a taking of private property from each property owner pursuant to Article 1, Section 19 of the Ohio Constitution and the 5th Amendment of the U.S. Constitution.[18] However, a taking claim is a claim which can only be made by the property owner at the time of taking.[19] USP and ABC have not intervened

[15] R.C. 4905.06
[16] Id.
[17] Id. at § 4905.91.
[18] Initial Brief of USP at 55 and Initial Post-Hearing Brief of ABC at 17.
[19] *In re Local Circuit Switching*, 2004 WL 962737 (Ohio P.U.C. Jan. 14, 2004).

as property owners, but rather as warranty companies whose business will allegedly be impacted under the terms of the IRP.[20] Aside from the fact that USP and ABC lack standing to make this argument, the Commission lacks jurisdiction to determine property issues.[21] The Public Utilities Commission is not a court, much less a court of general jurisdiction, and has no power to determine legal rights and liabilities with respect to contract rights or property rights, even though a public utility may be involved.[22] Thus, a taking claim can only properly be made by the property owner in state court.

Notwithstanding the Commission's jurisdiction or USP's and ABC's lack of standing to make such a claim, Columbia's assumption of financial responsibility for the maintenance, repair and replacement of hazardous service lines and the replacement of prone to failure risers does not constitute a taking. Rather, the location of facilities for service to a customer on a customer's property is a condition of service. Similar to a meter which is located on a customer's property pursuant to PUCO's regulations and Columbia's tariff[23], service lines and risers are facilities necessary to provide service to customers.

Even if a court concluded Columbia's IRP constitutes a taking, an exception exists if the property is used for a legitimate exercise of police power. For example, in *Andres v. City of Perrysburg* (1988), 47 Ohio App.3d 51, 546 N.E.2d 1377, the plaintiff challenged the constitutionality of the city preconditioning extension of sewer services to his house upon an agreement to annex his land. The court found that:

> Such a taking may be by means of regulation which in effect deprives one of the use of his property. However, "[l]aws enacted

[20] Motion to Intervene and Comments of USP (June 8, 2007); Motion to Intervene of IGS (June 26, 2007).
[21] *Hocking Valley Ry. Co. v. Public Util. Comm.* (1923), 107 Ohio St. 43, 46, 140 N.E. 667. ("The jurisdiction of a Public Utilities Commission is conferred by statute, and it has only such authority as is thus expressly delegated.").
[22] *Ranft v. Columbia Gas of Ohio. Inc.* (1978), 58 Ohio App.2d 39, 41-42, 388 N.E. 2d 759.
[23] Columbia Gas of Ohio, Inc. Rules and Regulations Governing the Distribution and Sale of Gas, Section III Parts 25 – 27, p. 7.

> in the proper exercise of the police power, ... reasonably necessary for the preservation of the public health, safety and morals, even though they result in the impairment of the full use of property by the owner thereof, do not constitute a 'taking of private property ...'" Inasmuch as it is well-settled that the annexation condition to receiving services is a proper exercise of police power, we cannot find that a taking of property existed in the case at hand.[24]

Likewise, Commission approval of the Amended Stipulation and IRP require Columbia to repair and replace hazardous service lines and prone to failure risers to protect public health and safety.

2. **COLUMBIA'S ASSUMPTION OF FINANCIAL RESPONSIBILITY FOR THE FUTURE MAINTENANCE, REPAIR AND REPLACEMENT OF HAZARDOUS SERVICE LINES AND THE REPLACEMENT OF PRONE TO FAILURE RISERS DOES NOT IMPAIR THE OBLIGATIONS OF USP'S AND ABC'S CONTRACTS.**

USP and ABC contend Columbia's assumption of financial responsibility for the future maintenance, repair and replacement of hazardous service lines and the replacement of prone to failure risers impairs its warranty service contracts. While the Commission has no power to determine the legal rights and liabilities with respect to contract rights,[25] such assertions are unfounded and inaccurate. USP states that courts have posed three questions in determining whether the contracts clause has been violated: (1) Has the state law operated as a substantial impairment of a contractual relationship; (2) Does the law have a significant and legitimate public purpose, such as remedying a general social or economic problem; and (3) Are the means chosen to accomplish the purpose reasonable and necessary?[26]

Columbia's assumption of financial responsibility for the future maintenance, repair and replacement of hazardous service lines and the replacement of prone to failure risers does not inflict a substantial impairment on ABC's and USP's contractual relationships. ABC and USP

---

[24] *Andres v. City of Perrysburg* (1988), 47 Ohio App.3d 51, 54, 546 N.E.2d 1377 (quoting *Pritz v. Messer* (1925), 112 Ohio St. 628, 149 N.E. 30, paragraph one of the syllabus).
[25] *Ranft v. Columbia Gas of Ohio. Inc.*, 388 N.E. 2d 759 (Ohio App. (10th) 1978).
[26] Initial Brief of USP at 51; *Energy Reserves Group, Inc. v. Kansas Power and Light Co.*, 459 U.S. 400, 411-412 (1983).

have both admitted that its contracts with customers cover a plethora of utility lines, including in-home water line warranties, in-home sewer warranties, in-home gas line warranties, in-home electric warranties, external sewer warranties, external water line warranties, landscape services and cover those lines inside and outside the dwelling.[27] Further, ABC's and USP's customers generally enter into a contract for monthly warranty coverage on an annual basis. Accordingly, ABC and USP will not suffer an impairment of any sort with its contracts upon the expiration of those annual contracts. To say USP and ABC will suffer substantial impairment of its obligations under its contracts is speculative at best. This fact becomes even more evident when considering that USP and ABC will ultimately gain a benefit from Columbia's responsibilities under the IRP since they will not have to effectuate those specific repairs or replacements, but will still receive the premiums paid on those contracts.[28]

USP and ABC also have a clear understanding of the Commission's authority with regard to utilities and operators. When parties contract as to a subject that comes "within the regulatory power of the state, there [is] incorporated into their contract an implied term that its provisions [are] subject to that power."[29] USP and ABC have effectuated contracts that encompass part of Columbia's distribution system as defined by Federal and State Pipeline Safety regulations, which comes within the clear jurisdiction of the Commission.[30] They cannot obviate the possibility of Commission regulation now by asserting constitutional injustice.

Commission approval of the Amended Stipulation also promotes a significant and legitimate public purpose by remedying a general social or economic problem. The Commission

---

[27] Initial Post-Hearing Brief of USP at 118 – 121; Initial Brief of ABC at 14 – 16.
[28] The record does not contain any statement that indicates USP or ABC will refund its customers the portion of those premiums which cover riser replacement or Columbia's assumption of financial responsibility for the repair and replacement of hazardous service lines.
[29] *Allen v. Shaker Heights Sav. Ass'n*, (1941), 68 Ohio App. 445, 451, 39 N.E.2d 747.
[30] R.C. 4905.04, .06 and .91.

has recognized "the tremendous public safety issues related to potential riser failures and serious leaks in service lines."[31] Columbia and Staff have continually demonstrated throughout this proceeding that customer safety can be increased by allowing Columbia to assume financial responsibility for the future maintenance, repair and replacement of hazardous service lines and the replacement of prone to failure risers. These claims have also been supported and endorsed by the OCC and OPAE as evidenced by choosing to become a signatory party to the Amended Stipulation. Commission approval of the Amended Stipulation undeniably remedies a general social problem by making customer safety the first priority in the distribution of natural gas – especially over the economic concerns of USP and ABC.

Further, the Amended Stipulation is reasonable and necessary in order to advance customer safety. Columbia, Staff, the OCC and OPAE have all gone on record to support the Amended Stipulation as reasonable and necessary. Columbia, specifically, has supported the Amended Stipulation as reasonable and necessary for the numerous reasons cited throughout this Reply Brief and its Post-Hearing Brief filed on December 31, 2007. Columbia incorporates all of those reasons and assertions here so that it does not belabor the point.

C. COLUMBIA HAS ACHIEVED COST EFFICIENCIES THROUGH ITS PROPOSED IRP.

Numerous assertions have been made that Columbia has not demonstrated that the IRP under the Amended Stipulation will provide customers with cost efficiencies. Or as stated by ABC, "Columbia essentially asks the Commission for a blank check."[32] Columbia has determined, through economies of scale, volume and manufacturer and contractor negotiations, that the current total program cost estimate for the riser replacement program is approximately

[31] *See* A Report by the Staff of the Public Utilities Commission of Ohio (November 24, 2006).
[32] Initial Brief of ABC at 5.

$121,500,000.[33] Columbia previously estimated a total program cost upwards of $160,000,000. A factor that could potentially lower that estimate is the use of the Perfection ServiSert fitting.

The Perfection ServiSert fitting is a radial seal transition fitting used to replace the existing transition fitting at the top of a service line riser. It is typically used to replace a compression fitting riser head without the need for excavation. While Columbia initially had concerns regarding this fitting, extensive research and discussions with a major Ohio Local Distribution Company ("LDC") and a contractor for that LDC who use this fitting in its riser replacements alleviated Columbia's concerns of the ServiSert fitting. Specifically, this fitting does not have the inherent problems associated with improper assembly, such as the ability to apply an incorrect amount of torque. It is also installed as a unit and not assembled in the field, which alleviates concerns regarding incorrect assembly of components.

Columbia has recognized that the use of the ServiSert fitting provides its customers with potential cost savings as compared to the full riser replacement. Since the ServiSert fitting does not require excavation, installation of the fitting is less time consuming and remediation of landscaping, paving and lawns is not necessary, which results in labor savings and greater customer satisfaction. It is important to note that the ServiSert fitting may only be used when specific criteria are met. Columbia has identified that criterion and will implement such training to its field personnel upon Commission approval of the Amended Stipulation.

Regardless of the riser replacement used, Columbia has effectuated significant cost savings as a result of central management of the riser replacement program, economies of scale and its competitive bidding process. For example, Columbia has saved approximately 10% in material costs due to economies of scale. Columbia realizes customers will incur nominal costs to receive safer and more reliable natural gas service under the IRP. However, Columbia has

[33] Columbia's Response to USP's Objection, Riser Material Plan at 3.

worked diligently to ensure its customers will receive the utmost in safety benefits and cost savings.

D. COLUMBIA HAS PRUDENTLY NOTIFIED CUSTOMERS OF THE SAFETY CONCERNS PRESENTED BY PRONE TO FAILURE RISERS.

USP contends "the greatest flaw with either the Application or the Stipulation is the failure to promptly inform the individual members of the public at risk directly of the Design-A riser."[34] USP also blindly asserts that this lack of notification proves "that the monopoly requirement for Columbia to do the repair contracting for the Design-A riser is a business enhancement not a safety enhancement."[35] On the contrary, Columbia has been prudent and maintained a constant level of communication between it and customers informing them of safety concerns presented by prone to failure risers. In March and April of 2007, Columbia sent a letter to all customers identified by the Staff Report as having a prone to failure riser that recommends and encourages customers to replace these defective risers and further explains the reimbursement procedure as defined at that time. In May of 2007, Columbia began mailing these same letters to customers it identified in its own survey of prone to failure risers. Columbia ceased mailings after the July 11, 2007 Entry and sought clarification through numerous meetings with Staff to update customer notifications and ensure consistency of the message Columbia conveyed to customers with the Commission's Entry. Columbia resumed mailing letters to customers in September of 2007, which again encouraged customers to replace defective risers and explained customer's ability to effectuate repairs themselves through DOT OQ plumbers, and the associated reimbursement process.

Fortunately, USP's concerns regarding "the greatest flaw" in Columbia's Amended Stipulation can be laid to rest as Columbia took even greater precautions in notifying its

[34] Initial Post-Hearing Brief of USP at 32.
[35] Id. at 32 – 33.

customers of the safety concerns presented by prone to failure risers. On February 2, 2007, Columbia issued a release and posting to its website announcing the riser replacement initiative and included information regarding the riser situation on its IVR, or automated phone system. In March of 2007, Columbia left a door tag at every location checked in the riser survey and on every service call regardless if a prone to failure riser existed. These hangers even directed customers to Columbia's website where a list of DOT OQ plumbers could be found in order to assist customers with individual replacement of prone to failure risers. Following the July 11, 2007 Entry, Columbia also issued a news release informing customers of the prone to failure riser safety concerns and appropriate methods to address those safety concerns, including instructions on performing replacements via DOT OQ plumbers.

Columbia has maintained its position throughout this proceeding that customer safety should be the top priority. USP and others have continued to make blind and false accusations to undermine Columbia's position. Columbia's relentless effort to educate, inform and notify customers of the dangers associated with prone to failure risers and the remedies available to those customers, as described above, unequivocally proves both of these statements.

E. CUSTOMERS WOULD BE ABLE TO REPAIR CLASS 3 LEAKS ON SERVICE LINES UNDER THE AMENDED STIPULATION.

Columbia will grade all leaks on service lines in accordance with Ohio Adm. Code 4901:1-16-04 and Columbia's Policies and Procedures. Under the Amended Stipulation, Columbia has requested authority to maintain, repair and replace hazardous customer service lines only. Non-hazardous, or Grade 3 leaks, are defined as leaks that are not a hazard to public safety at the time of detection and that can be reasonably expected to remain non-hazardous. Columbia will monitor non-hazardous leaks until they are repaired or there is no longer any

indication of leakage.[36] ABC has incorrectly assumed that this would create a class of leaks that Columbia would refuse to repair and the property owner would be barred from repairing on their own.[37] However, Columbia has not requested authority to maintain, repair or replace non-hazardous leaks in customer service lines and would not preclude a customer from repairing such a leak on its own accord. Columbia would still have the responsibility of monitoring non-hazardous leaks, which will ensure – regardless of customer action – that leaks are repaired or replaced when necessary and alleviate any concern for public safety.

F. THE REIMBURSEMENT PERIOD SET FORTH BY THE AMENDED STIPULATION IS BOTH REASONABLE AND APPROPRIATE.

Paragraph 3 of the Amended Stipulation contemplates customer reimbursement for repairs or replacements of prone to failure risers and hazardous customer service lines occurring between November 24, 2006 and February 28, 2008. This time period correlates with the filing of the Staff Report and the day prior to the start date of the IRP. However, IGS argues that no reason exists as to why "repairs made by independent contractors should have to occur before the arbitrary and random date of February 28, 2008 ..."[38] As previously indicated by the Commission, these dates are not arbitrary, nor are they unreasonable:

> We agree with IGS to the extent that a customer, having repaired or replaced a riser prone to failure or an associated service line, prior to our approval of Columbians IRP and since November 24, 2006, when the staff report was issued, should be reimbursed by Columbia for those costs, up to a reasonable limit. Such customers should not be penalized for their diligence. However, we disagree that customers should be encouraged, through a reimbursement program, to continue to take upon themselves the responsibility to determine whether they have an affected riser and to repair the problem. We believe that this is a system-wide issue and is best handled by transferring the responsibility to Columbia on a system-wide basis. Therefore, we will not require Columbia to

[36] Columbia Ex. 5 at 2.
[37] Initial Post-Hearing Brief of ABC at 2.
[38] IGS's Brief in Opposition to Proposed Stipulation and Recommendation at 5.

> reimburse customers for repairs made after our approval of the IRP.[39]

This period gives customers fifteen months to contract with a DOT OQ plumber to effectuate such repairs or replacements. Fifteen months is undoubtedly a sufficient amount of time for customers to respond to riser and service line issues should the customer feel immediate action is necessary. Even if customers do not effectuate such repairs within that time period, Columbia will prioritize repairs and replacements of prone to failure risers based on riser leakage data that has been collected and submitted to the Commission over the last fiver years.

The time period for which customers may contract with DOT OQ plumbers is also necessary so that customers receive the safety benefits of the IRP. Under the IRP, Columbia will continue to have complete responsibility for all pipeline safety regulations, and would be able to uniformly correct all safety issues as required by the pipeline safety regulations. Uniformity through central management will allow Columbia to have better oversight, control and structure over the quality of work being performed. Managerial control under the IRP will enable Columbia to ensure repairs and replacements are preformed at a standard of quality that exceeds that which exists today for the work done by private, unregulated entities. This is a solution that even the witnesses for USP believed would work effectively.[40] A patchwork of independent, unregulated plumber repairs and replacements will only allow for the continuation of the status quo – which caused the current riser safety concerns.[41]

[39] July 11, 2007 Entry at ¶ 22.
[40] Transcript Vol. IV at 99 and 317.
[41] Post-Hearing Brief of Columbia at 17.

G. COLUMBIA'S ASSUMPTION OF RESPONSIBILITY FOR CUSTOMER SERVICE LINES AND RISERS WILL NOT RESULT IN PARTIAL OWNERSHIP NOR WOULD IT BE APPROPRIATE TO EXTEND THAT RESPONSIBILITY TO HOUSE LINES.

ABC is critical of the Amended Stipulation because "Columbia would assume no responsibility for interior lines, however, nor would they take responsibility for downstream lines, such as to the backyard barbecue pit" and "When the portions of the lines were eventually repaired, Columbia would own the repaired section – but not the remainder of the line ..."[42] Neither statement is correct, and the former demonstrates the lack of understanding and familiarity independent third party plumbers have regarding pipeline safety regulations and Columbia's responsibility to uphold those regulations.

Distribution and service lines fall under the Federal and State Pipeline Safety regulations, which prescribe the minimum requirements for pipeline facilities and the transportation of gas.[43] These regulations apply to all facilities as defined under Section 192.3, Title 49 C.F.R., which includes service lines and risers. These regulations require the operator, defined as a person or entity who engages in the transportation of gas, to comply with these regulations. Under Federal and State Pipeline Safety regulations, Columbia, as an operator, is responsible for the operation and maintenance of jurisdictional pipe (e.g. service lines and risers) to the outlet of the meter.[44] These regulations do not impose responsibilities upon Columbia for interior lines, or lines to "barbecue pits". Rather, these regulations impose responsibilities upon Columbia for lines up to and including the meter. It is not coincidental that the Amended Stipulation provides Columbia with mirrored responsibility for those lines that are dictated by Federal and State Pipeline Safety regulations. Thus, approval of the Amended Stipulation will increase Columbia's ability to implement and uphold its responsibilities under the Federal and State Pipeline Safety regulations.

[42] Initial Brief of ABC at 4 and 11.
[43] Section 192, Title 49 C.F.R.
[44] Staff Ex. 2 at 10 – 11.

As noted above, ABC also incorrectly presumes the Amended Stipulation would result in Columbia being responsible for only a portion of a service line, while the customer would retain responsibility for the remaining portion. Under the Amended Stipulation, Columbia will be responsible for all future maintenance, replacement and repair of customer service lines. Columbia's witness, Michael Ramsey explains that Columbia will maintain responsibility for the entire service line, regardless of whether Columbia previously fixed only a portion of that line:

> The Amended Stipulation eliminates the current situation where Columbia and property owners divide the responsibilities for the customer service lines. Customers will call Columbia for all problems with customer service lines including customer service lines that may have been previously repaired or replaced by Columbia, even if it was a partial repair or replacement. Columbia will respond, record and manage all future required repairs or replacements. Therefore, Columbia's central management of customer service line repairs or replacements will eliminate all confusion for leaks on customer service lines.[45]

The Amended Stipulation correctly places responsibility for service lines and risers on the operator, or Columbia. It does not divide the responsibilities of the Federal and State Pipeline Safety regulations between operator and customer. In fact, it corrects the situation today where customers and Columbia divide those responsibilities. As 48 states have already recognized, the responsibilities handed down under those regulations should fall squarely and solely on the shoulders of the operator.

III. CONCLUSION

The Commission is faced with an unparalleled opportunity in this proceeding to progress the fundamental principle of customer safety, alleviate customer and utility concerns, and enable Columbia to provide natural gas services to its customers in the safest manner possible. Staff, the OCC, OPAE and Columbia believes it is in the public interest to allow Columbia to assume

[45] Columbia Ex. 5 at 4.

financial responsibility for the future maintenance, repair and replacement of hazardous service lines and the replacement of prone to failure risers. Columbia's customers should expect its LDC to provide natural gas services in the safest and most affordable manner. The Amended Stipulation grants Columbia that ability to resolve all public safety issues related to potential riser failures and hazardous leaks in service lines.

For the reasons discussed herein, Columbia respectfully request that the Commission approve the Amended Stipulation.

Respectfully submitted,

COLUMBIA GAS OF OHIO, INC.

Daniel A. Creekmur
Trial Attorney

Mark Kempic, Assistant General Counsel
Kenneth W. Christman, Associate General Counsel
Stephen B. Seiple, Lead Counsel
Daniel Creekmur, Trial Attorney
200 Civic Center Drive
P.O. Box 117
Columbus, OH 43216-0117
Telephone: (614) 460-4680
Fax: (614) 460-6986
Email: dcreekmur@nisource.com

Attorneys for
COLUMBIA GAS OF OHIO, INC.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Post-Hearing Reply Brief of Columbia Gas of Ohio, Inc. was served upon all parties of record by electronic mail this 19th day of February 2008.

Daniel A. Creekmur
Attorney for
COLUMBIA GAS OF OHIO, INC.

SERVICE LIST

David C. Rinebolt
Ohio Partners for Affordable Energy
231 West Lima St., P.O. Box 1793
Findlay, OH 45839-1793
drinebolt@aol.com

Joseph P. Serio
Associate Consumers' Counsel
10 W. Broad St., Suite 1800
Columbus, OH 43215
serio@occ.state.oh.us

Vincent A. Parisi
5020 Bradenton Avenue
Dublin, Ohio 43017
vparisi@igsenergy.com

Joseph M. Clark
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215
jclark@mwncmh.com

Carl A. Aveni, II
Carlile, Patchen & Murphy LLP
366 E. Broad St.
Columbus, OH 43215
caa@cpmlaw.com

Anne L. Hammerstein
Stephen B. Reilly
180 East Broad St., 9th Floor
Columbus, Ohio 43215-3793
Anne.hammerstein@puc.state.oh.us
Stephen.reilly@puc.state.oh.us

Stephen M. Howard
Vorys Sater Seymour and Pease LLP
52 East Gay Street, P.O. Box 1008
Columbus, OH 43216-1008
smhoward@vssp.com

John W. Bentine
Chester, Wilcox & Saxbe LLP
65 East State St., Suite 1000
Columbus, OH 43215-4213
jbentine@cwslaw.com

Summary: Brief Reply Brief of Columbia Gas of Ohio, Inc. electronically filed by Mr. Daniel A Creekmur on behalf of Columbia Gas of Ohio, Inc.